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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PETER KEITH, Plaintiff and Appellant, v. PACIFICA INVESTMENTS, LLC, Defendant and Respondent.	2d Civ. No. B265582 (Super. Ct. No. CV120665) (San Luis Obispo County)

Peter Keith appeals from a court trial judgment declaring that he does not have a prescriptive easement in a parking lot. He is also prohibited from maintaining parking spaces and bumpers on a portion of his property. Keith contends the judgment is not supported by substantial evidence. We affirm.

Facts

Keith owns a 5400 square foot lot in a commercial area of Arroyo Grande (the "lot"). The lot is improved with a 3000 square foot building that has been leased, over the years, by

a thrift shop, a flag store, a furniture and mattress store and an exercise and dance studio. On the east side of the building is a 14-foot wide alleyway or driveway that is used for ingress and egress by both users of the lot and, pursuant to an express written easement, by users of the adjacent property. This property is a 9000 square foot lot owned by respondent Pacifica Investments LLC (the Pacifica property). The Pacifica property is improved with an office building and a parking lot.

Appellant bought the lot from Jack Sloan. Sloan testified that he used the building for an office supply store and that he parked both his personal car and his delivery truck on the Pacifica parking lot every day during the 15 years he owned the property. However, Sloan made arrangements for his employees to park in another, nearby parking lot. Sloan's customers frequently used the Pacifica parking lot. He estimated they would park, on average, for 15 or 20 minutes.

After appellant bought the lot, his tenants and their customers continued to park in the Pacifica lot on a daily basis. There are no signs relating to parking posted on the Pacifica parking lot. Appellant's tenants did not complain about the availability of parking. Keith believed that they used the Pacifica parking lot, without interference, every day. Before 2011, neither Sloan nor Keith received any complaints from Pacifica or its tenants about their use of the Pacifica parking lot. No one from Pacifica ever told appellant that his tenants or customers were prohibited from parking there.

Appellant testified that it was his habit to inform tenants about the limited parking. The form lease he used before 2008 stated that tenants were entitled to on-site parking. Appellant would explain to tenants that he did not own the

adjacent Pacifica parking lot or control parking there. He could not guarantee a particular number of spaces would be available, or that any spaces would be available. But the Pacifica parking lot had historically been used by his tenants and he had never been told his tenants were prohibited from parking there.

Tenants of the Pacifica office building knew that tenants of and visitors to the lot parked in their parking lot. One tenant testified she did not complain because it didn't seem like a problem. The landowners paid little attention to the parking; it was their philosophy that the tenants should be in charge of parking.

In 2011, appellant leased the building to an exercise and dance studio. The lot is zoned for commercial use. To operate their dance studio on the property, its owners applied to the city for a minor use permit. After the city granted the permit, neighboring landowners appealed to the planning commission, citing concerns about excessive noise and parking problems. At the hearing on the appeal, Pacifica's property manager told the Arroyo Grande City Council that appellant's tenants could not park in the Pacifica parking lot and that he would not enter into a shared parking agreement with appellant. Appellant attended the hearing but did not assert that he and his tenants had a prescriptive right to park in the Pacifica parking lot. Although the city granted the tenants a minor use permit, the tenant eventually abandoned the lease, claiming it could not comply with the conditions imposed by the permit. Appellant then painted stripes and installed concrete bumpers to create three diagonal parking spaces along the side of his building, in the area covered by the express easement.

Procedural History

Appellant's second amended complaint alleges that appellant acquired a prescriptive easement for non-exclusive use of the Pacifica parking lot because he and prior owners of the lot had continuously used the Pacifica parking lot in an open and notorious way, under a claim of legal right, since the 1960s. Appellant's first cause of action seeks to quiet title in the prescriptive easement to use the Pacifica parking lot. The second cause of action seeks an injunction to restore use of the Pacifica parking lot for himself, his tenants and their customers. Respondent Pacifica filed a cross-complaint to quiet title to its express easement in the driveway area.

After a three-day trial, the trial court found in favor of respondent on both the complaint and cross-complaint. It found that Keith had not acquired a prescriptive easement in the Pacifica parking lot because he used the lot with Pacifica's permission. Keith's use was not hostile or adverse to Pacifica's ownership. The trial court further found the parking spaces appellant created in the driveway interfered with Pacifica's express easement. It entered a permanent injunction requiring appellant to remove the concrete bumpers and parking spaces.

Discussion

Substantial Evidence. In its statement of decision, the trial court found factually that appellant and his predecessor, Sloan, used the Pacifica parking lot with the permission of the landowner, rather than under a claim of right that was hostile or adverse to the landowner. Appellant contends this finding is not supported by substantial evidence. We disagree.

"Whether the elements of prescription are established is a question of fact for the trial court [citation], and the findings

of the court will not be disturbed where there is substantial evidence to support them." (*Warsaw v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.3d 564, 570.) The elements necessary to establish an easement by prescription are "open and notorious use of another's land, which use is continuous and uninterrupted for five years and adverse to the land's owner." (*Grant v. Ratliff* (2008) 164 Cal.App.4th 1304, 1308.) A use is "adverse" or made under a "claim of right" if the use is made without the landowner's explicit or implicit permission. (*Aaron v. Dunham* (2006) 137 Cal.App.4th 1244, 1252; see also *Felgenhauer v. Soni* (2004) 121 Cal.App.4th 445, 450.)

The claimant need not subjectively intend to deprive the land's owner of his or her property rights. Instead, adverse use may be established even when the claimant's occupancy or use occurred through mistake. (*Vieira Enterprises, Inc. v. McCoy* (2017) 8 Cal.App.5th 1057, 1077.) The requirement that the claimant's use be hostile or adverse ""means, not that the parties must have a dispute as to the title during the period of possession, but that the claimant's possession must be adverse to the record order, 'unaccompanied by any recognition, express or inferable from the circumstances of the right in the latter.""" (*Id.* quoting *Gilardi v. Hallam* (1981) 30 Cal.3d 317, 322-323, quoting *Sorenson v. Costa* (1948) 32 Cal.2d 453, 459.)

Here, a reasonable trier of fact could find, as did the trial court, that appellant used the Pacifica parking lot with the implied permission of its owner, and not under an adverse claim of right. Appellant's and Sloan's behavior demonstrates that both owners understood they had no prescriptive right to park in the Pacifica parking lot. Sloan made arrangements for his employees to park in a nearby lot owned by another landowner. When he

sold the building to appellant, Sloan told appellant the parking was very limited.

Appellant used pre-printed form leases with his tenants. Between 2000 and 2008, these leases uniformly stated, "Tenant is entitled to on-site parking."[1] A 2004 lease included the same term, but also included a handwritten notation reading, "No promise is made regarding parking availability on any site other than that owned and/or controlled by landlord." In 2008, appellant's property manager switched to a different form lease. This lease included an addendum stating, "Lessee is advised that there is no parking on site."

Appellant testified that he informed his tenants, "I don't own that property [e.g., the Pacifica lot], but I had [the] right to park there, and . . . I don't control the property." He wanted his tenants to understand "that I [don't] control the property. We had a right to park there, but I couldn't guarantee the control of it." He believed that the lease addendum written by his property manager meant the same thing: "[W]e don't actually have control. We've had parking there. We don't have control over who parks there or how many parking spaces are taken. So we can't guarantee that there's a space for a tenant." Appellant also told tenants there were no assigned or reserved parking spaces. "It was ours to park and had been for 50 or 60 years, but we couldn't guarantee a specific parking place or a specific number of parking places."

On cross-examination, appellant testified that, if a prospective tenant asked him questions about the parking

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[1] In each lease, this statement is followed by handwritten notation stating, "see addendum." The addenda were apparently lost and are not included in the record.

situation, "My answers typically would be, 'I don't own or control the property;' that 'I can't tell you [that] you can park there. I can't tell you how many people or cars, vehicles, trucks, whatever, but historically, the parking has been available, and we've not been told we can't use it, and I don't want to tell you that you can use it for any particular number of vehicles or that you even have the right to park there on a daily basis. It's a first-come, first-serve. We've not been told that we can't park you there. There's no signage indicating that you can't or I can't or your clients can't park there.'"

In addition, tenants of the Pacifica property knew their parking lot was used by Keith's tenants. They allowed the use to continue because it did not seem to be a problem. When the dance studio created a parking problem, Pacifica tenants joined other nearby businesses to challenge the studio's minor use permit. Keith did not assert at that time that he and his tenants had a prescriptive right to use the Pacifica parking lot.

This evidence directly contradicts appellant's claim that he acquired, through continuous, adverse use, a prescriptive right to use the Pacifica parking lot. Appellant admitted that he did not own or control the Pacifica parking lot. Tenants of the lot used the Pacifica parking lot because no signs prohibited that use and they had never been told to stop. Appellant never guaranteed their continued access to the Pacifica parking lot or attempted to exclude other users from it. This does not describe use under a claim of right that is adverse to the rights of the landowner. It is instead an admission that owners, tenants and customers of the lot used the Pacifica parking lot with the tacit permission of the landowners and an acknowledgment that their use of the Pacifica parking lot could be cut off at any time. The

trial court could correctly rely on this substantial evidence to factually find appellant's use of the Pacifica parking lot was permissive rather than hostile or adverse.[2]

Permanent Injunction. In 1952, the then-owner of the lot recorded an express easement, burdening the lot and serving the Pacifica property. The easement grants to the owner of the Pacifica property "a right of way for passage, including the movement of vehicles, in that strip fourteen feet wide along the easterly side of the [lot], which strip is ninety feet long and used as an alley and to be used as an alley in connection with the [Pacifica property] . . . . The said right of passage is particularly granted so that grantee may utilize the said alley to facilitate parking on his said property. [¶] Grantors particularly reserve to their said property all rights to use said alley in connection with the loading platform towards the rear of their property, including the parking of vehicles in the said alleyway at the said platform while they are being loaded or unloaded. It is distinctly understood that grantors and their property shall perpetually jointly share the said right of way privileges extended to grantee."

In 2011, appellant installed concrete bumpers and painted stripes marking three diagonal parking spaces along the alleyway. The trial court found these parking spaces interfered with the easement and granted respondent a "mandatory

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[2] Because the use was permissive, no presumption of adverse use arose. (*Warsaw v. Chicago Metallic Ceilings, Inc.*, *supra*, 35 Cal.3d at pp. 571-572 ["in the absence of evidence of mere permissive use," continuous use of an easement over a long period of time without interference is presumptive evidence of a prescriptive easement].)

injunction . . . commanding the removal of the parking improvements, including both striping and parking bumpers."

Appellant contends the trial court erred because the easement allows parking in the alley and because there is no substantial evidence the parking spaces interfered with the use of the easement as a driveway. We are not persuaded.

As the court explained in *Scruby v. Vintage Grapevine, Inc.* (1995) 37 Cal.App.4th 697, "In construing an instrument conveying an easement, the rules applicable to the construction of deeds generally apply. If the language is clear and explicit in the conveyance, there is no occasion for the use of parol evidence to show the nature and extent of the rights acquired. [Citations.]" (*Id.* at p. 702.) The owner of the servient estate – here, appellant Keith – may use the easement area, so long as that use does not unreasonably interfere with the purpose of the easement. (*Camp Meeker Water System, Inc. v. Public Utilities Com.* (1990) 51 Cal.3d 845, 867; *Raab v. Casper* (1975) 51 Cal.App.3d 866, 876.) "The conveyance of an easement limited to roadway use grants a right of ingress and egress and a right of unobstructed passage to the holder of the easement. A roadway easement does not include the right to use the easement for any other purpose. [Citation.]" (*Scruby*, *supra*, at p. 703.) Whether a particular use of an easement unreasonably interferes with its purpose "is a question of fact for the trier of fact, and its findings based on conflicting evidence are binding on appeal. [Citations.]" (*Ibid.*)

Appellant contends the language of the easement is ambiguous and should be interpreted to allow the installation of parking spaces in the alleyway. There is no ambiguity. The easement describes a loading platform "toward the rear" of the lot

and allows "the parking of vehicles in the said alleyway at the said [loading] platform while they are being loaded or unloaded." Keith's parking spaces, by contrast, were installed along the side of the building, were not adjacent to a loading platform and were not limited in their use to loading and unloading. The trial court correctly found that the easement did not allow for the installation of these parking spaces.

Substantial evidence supports the trial court's finding that the parking spaces unreasonably interfered with the use of the easement area as a driveway. While there was no expert testimony regarding traffic patterns or use of the alleyway, the record includes photographs of the alley and the parking spaces. In addition, the property manager of the Pacifica property testified the alleyway would be blocked if cars were parked in the spaces Keith had installed. The trial court could reasonably find from both the photographs and the property manager's testimony that the parking spaces interfered with the use of the alley as a driveway.

Conclusion

The judgment is affirmed. Costs awarded to respondent.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P. J.

PERREN, J.

Martin J. Tangeman, Judge

Superior Court County of San Luis Obispo

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